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Supreme Court of the United States

October Term, 1953

No. .....

STEAMSHIP FLETERO, AND COMPANIA ARGENTINA DE NAVIGAZIONE DODERO, S. A.

Petitioners

v.

HUGO ARIAS,

Respondent

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

PETITION FOR CERTIORARI

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in the above entitled case on July 31, 1953.

OPINIONS BELOW

The memorandum opinions of the District Court (Bryan J.) are unreported. The memorandum opinion dealing with

the jurisdictional point may be found at page 17 of the Record and the memorandum opinion dealing with the case on its merits may be found at page 18 of the Record. The opinion of the Court of Appeals for the Fourth Circuit is reported in ..... Fed. (2d) ....., and may be found at page 145 of the Record.

JURISDICTION

The judgment of the Court of Appeals was entered on July 31, 1953 (R. 157). The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254, (1).

QUESTIONS PRESENTED

1. Whether the District Court erred in retaining jurisdiction of this case solely on the grounds that the retention of jurisdiction of personal tort suits by alien seamen against foreign vessels is required by the doctrine of the Fourth Circuit.

2. What law should be applied to the case of an Argentine seaman who is injured aboard an Argentine vessel which is temporarily in a United States port.

3. Whether the Jones Act, 46 U. S. C., Section 688, is applicable to the case of an Argentine seaman who signs articles aboard an Argentine steamship in Buenos Aires for a round voyage beginning and ending in Buenos Aires and is injured while the vessel is in a United States port.

STATUTE INVOLVED

The only statute involved is the Jones Act, 46 U. S. C., Section 688, which is printed in the appendix to this petition at page 14.

STATEMENT

The respondent, an Argentine citizen, domiciled in the City of Buenos Aires, Argentina, signed articles (R. 88), on board the Argentine steamship *Fletero* on September 14, 1951, for a round voyage beginning and ending in Buenos Aires. He had been going to sea for only sixteen months at this time and had served on only two vessels, both of which flew the Argentine flag (R. 28, 29). On the first of these vessels, the S. S. *Campero,* he completed four round voyages, all of which began and ended in the port of Buenos Aires (R. 28, 29). On the second of these vessels, the S. S. *Fletero,* he made one round voyage from Buenos Aires to Liverpool and return, and on the second voyage from Buenos Aires to the United States, he was injured while said vessel was at the port of Norfolk, Virginia, on October 15, 1951. He was immediately put in the Marine Hospital at Norfolk where he remained a patient until February 20, 1952. As the *Fletero* was scheduled to sail on the day of respondent's injury, the master instructed his local agents, Dichmann, Wright & Pugh, Inc., to take care of his needs and to provide him with transportation to Argentina upon his discharge from the hospital. The only request made by the respondent of the vessel's agents while he was in the hospital was made on or about October 20, 1951, at which time he requested the sum of twenty dollars ($20.00) which was promptly supplied him (R. 52, 54). On January 9, 1952, while still in the hospital, respondent acting through his attorney, filed a libel against the vessel and its owner for damages allegedly resulting from unseaworthy appliances aboard the vessel (R. 1). No mention was made in the libel of any claim for wages. On January 23, 1952, an amended libel was filed, setting out an additional cause of action under the Jones Act, 46 U. S. C., Section 688, but still no mention was

made of wages. The petitioners then, on February 1st, 1952, filed a plea to the jurisdiction (R. 6), requesting the Court to decline jurisdiction of this case on the grounds that the Jones Act is not applicable, and since the seaman has an adequate remedy for his injuries under the laws of the Republic of Argentina, he should be referred to the courts of Argentina for his remedy, in accordance with the settled doctrine of our admiralty courts in such matters. Following this, on February 14, 1952, apparently in an effort to inject an American statute in the case so that the court could not decline jurisdiction, respondent filed a second amended libel setting up a claim for wages and penalties under 46 U. S. C., Section 596. Wages had never been mentioned before and no specific sum was claimed in this amended libel, hence it became necessary for petitioners to serve the respondent with interrogatories in order to ascertain the amount of wages claimed to be due (R. 8). Shortly after these interrogatories had been answered (R. 9), petitioners tendered to respondent the sum of $1,304.71, representing the full amount of wages and penalties claimed to be due. This tender was made in order to erase this belated cause of action for wages from the case, since there had never been any dispute as to wages and the petitioners had always been ready and willing to pay the same as soon as ascertained. This tender was promptly refused by respondent's proctor (R. 11), and the respondent himself was never even advised that a tender had been made (R. 69).

The case was then heard on the jurisdictional point, at which time petitioners produced uncontradicted evidence of the following facts:

1. That the libellant was an Argentine seaman domiciled in the City of Buenos Aires who had signed articles for a round voyage beginning and ending in Buenos Aires (R. 29).

2. That following his transfer to the hospital on October 15th, 1951, respondents had expended the sum of $2,382.90 for libellant's maintenance and care, and had always been ready and willing to repatriate him to Buenos Aires (R. 53).

3. That the Argentine Consul General for the Port of New York had filed a petition requesting that the court decline jurisdiction, and stating that he would guarantee libellant's repatriation to Argentina (R. 14).

4. That the following remedies are available to the libellant under the laws and courts of the Republic of Argentina:

(a) A cause of action under the Workmen's Compensation Laws of Argentina where recovery may be had without proof of negligence or unseaworthiness, but is limited to 1,000 days wages (6,000 pesos) (R. 41, 42).

(b) A cause of action under the Argentine Commercial Code for Indemnification where proof of negligence or unseaworthiness is unnecessary, but recovery is limited to 1,000 days wages (6,000 pesos) (R. 43, 44).

(c) A cause of action under the Civil Code of Argentina based on negligence or unseaworthiness where the amount of recovery is unlimited (R. 44-50).

Following a lengthy hearing on the jurisdictional point the District Court rendered its memorandum opinion of July 29, 1952 (R. 17), in which it stated as follows:

"Although the libellant and the respondents are all Argentines, the Court will retain jurisdiction of this cause. The suit is for damages for a personal injury occurring on a vessel while she was made fast to a pier in Norfolk harbor. There is a claim too for wages.

> The latter would not alone support jurisdiction. The respondent has never refused to pay any wages due and, indeed, has repeatedly tendered them to libellant. However, retention of jurisdiction in personal tort suits of this nature between foreigners seems to be the doctrine of this circuit. Heredia v. Davies, 4 Cir. 12 F. 2d 500; The Eir, 4 Cir., 60 F. 2d 124."

An order was then entered on July 29th, 1952, denying petitioners' plea to the jurisdiction, and a plea of sovereign immunity which had also been made and which was denied on the grounds that the vessel was engaged in carrying commercial cargoes for profit. No appeal has been taken from the ruling of the District Court on this latter point.

The matter then went to trial on the merits, following which the court rendered its memorandum opinion of November 26th, 1952 (R. 18), in which it awarded the respondent damages of $20,000 for his personal injury. This award was based both on unseaworthiness under the general admiralty law and fellow servant negligence under the Jones Act, 46 U. S. C., Section 688, and the damages were assessed according to the American standard. No mention was made in this opinion of the Argentine law and in fact it is clear from *Heredia* v. *Davies,* 12 F. (2d) 500 (CA 4) cited by the District Judge (R. 20) that the court applied the *lex loci delecti* and not the law of the flag. In the Findings of Fact and Conclusions of Law (R. 20) respondent was given an additional award of $1,321.00 for wages and penalties, although the court at this time stated "there was no actual cause of action therefor because they were never in controversy, the respondent being ready and willing to pay them whenever ascertained" (Finding No. 11, R. 25).

On appeal to the Court of Appeals for the Fourth Circuit

the decision of the District Court was affirmed, the Court stating that since the award of $20,000 was based on both unseaworthiness and negligence that it was unnecessary for it to decide the question of whether the Jones Act, *supra,* was applicable, as the unseaworthiness alone was sufficient on which to base the recovery.

SPECIFICATIONS OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In retaining jurisdiction of this case solely on the grounds that the retention of jurisdiction of personal tort suits of this nature is required by the doctrine of the Fourth Circuit.

2. In failing to hold that this case should be governed by the laws of Argentina, including the Workmen's Compensation laws of this country.

3. In failing to reverse the decision of the District Court on the application of the Jones Act, *supra.*

4. In failing to remand the case to the District Court for a new trial under the Argentine law.

5. In holding that the Steamship *Fletero* was unseaworthy and that this unseaworthiness was the proximate cause of respondent's injury.

6. In failing to hold that the sole proximate cause of respondent's injury was the negligence of his fellow servants for which there can be no recovery under the Argentine law.

REASONS FOR GRANTING THE WRIT

I.

Conflict With the Decisions of the Supreme Court

In affirming the decision of the District Court in which Judge Bryan retained jurisdiction of this case solely because "the retention of jurisdiction in personal tort suits of this nature between foreigners seems to be the doctrine of this Circuit," the court below has in effect approved a doctrine which requires the retention of jurisdiction of all personal injury suits arising out of accidents aboard foreign vessels which occur while said vessels are temporarily in a United States port, which is contrary to the doctrine of *discretionary* jurisdiction recognized and approved by this court in *The Maggie Hammond,* 9 Wall. 435, 457; *The Belgenland,* 114 U. S. 355, 368; *Langes* v. *Green,* 282 U. S. 531, 544; *Canada Malting Co.* v. *Paterson Steamships,* 285 U. S. 413, 420. Under the doctrine of these cases the retention of jurisdiction in such cases lies within the sound discretion of the District Court and it is error to abuse this discretion. Certainly, if it is an error to abuse this discretion, it is an even greater error to fail to exercise it. The Court of Appeals in affirming the District Court has listed several reasons why, in its opinion, the District Court acted properly in retaining jurisdiction,* but an examination of the opinion of the District Court dealing with this jurisdictional point clearly shows that the District Judge had no such reasons

*"The injury occurred while the ship was tied up in the dock at Norfolk and the injured seaman was in a Norfolk hospital. A survey of the vessel had been made in Norfolk and the survey and other proofs were available there to establish libellant's cause of action. The injured seaman had been discharged from the vessel without payment of a considerable balance of wages due him; counsel whom he had employed lived in Norfolk and by their diligence had prepared the case so as to establish his right to recover substantial damages."

in mind, for if he had he would have most certainly set them out in his opinion, particularly since the settled doctrine of the admiralty courts has been to decline jurisdiction in such cases if "justice would be as well done by remitting the parties to their home forum." *The Maggie Hammond, supra.* This rule has been recognized by the Supreme Court many times. See *The Belgenland, supra; Langes* v. *Green, supra; Canada Malting Co.* v. *Paterson Steamships, supra.* In fact, in a very recent case decided by this court, *Lauritzen* v. *Larsen,* No. 226 — October Term, 1952, ... U. S. ....., 97 L. Ed. 804, Mr. Justice Jackson quoted with approval from *United States* v. *Flores,* 289 U. S. 137, 158, wherein this court stated:

> "And so by comity it came to be generally understood among civilized nations that all matters of discipline and all things done on board which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or the tranquility of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged as the laws of that nation or the interests of its commerce should require. . . ."

Furthermore, it is clear from an examination of the *Lauritzen* case, *supra,* that the reasons set out by the court below are insufficient to warrant the retention of jurisdiction. It is true that in the *Lauritzen* case, this court was not concerned with a case of discretionary jurisdiction, but with the question of what law should be applied to the case of a foreign seaman who is injured on a foreign vessel. Mr. Justice Jackson, however, in writing the opinion of the court, has gone into great detail to deal with most of the factors which are usually considered by a court in deciding whether

or not it should retain jurisdiction. Certainly our courts should not retain jurisdiction just because the injury occurred in a United States port and the seaman has obtained diligent counsel, who, on a subsequent visit of the vessel to this country, arranged for a survey of certain appliances on board the vessel, and at the expense of delaying the vessel took the depositions of various witnesses, all of whom reside in Argentina. Neither can any significance be attached to the fact that it later developed that this seaman was entitled to certain wages, as the District Court has found that there was never any controversy as to wages. The real test is that set out in *The Maggie Hammond, supra,* wherein it is stated that the court should not take jurisdiction "if justice would be as well done by remitting the parties to their home forum," and it is clear that even at this date it would work no hardship on the respondent to refer him to the courts of Argentina, where workmen's compensation proceedings have already been commenced on his behalf (R. 85), and the statute of limitations on his right to sue has not as yet begun to run (R. 141-144).

The decision of the court below also conflicts with the decision of this court in the *Lauritzen* case, *supra,* on the application of the law of the flag. In the *Lauritzen* case this court held that the law of the flag applied to an injury sustained by a Danish seaman on board a Danish vessel in a Cuban port, and hence the Jones Act, *supra,* was inapplicable. In the instant case, however, the court below has refused to pass on the application of the Jones Act, *supra,* and has left open the issue of the application of the law of the flag on the theory that as to unseaworthiness there is no difference between the law of Argentina and the general maritime law, and since the Workmen's Compensation law of Argentina is procedural and not substantive in nature, it

may be disregarded. This appears to be quite a convenient way to dispose of the appeal, but it does not do justice to the *Lauritzen* case, which says that the law of the flag should be applied. It is true that the injury in the *Lauritzen* case occurred in Cuban waters, whereas the injury in the instant case occurred in United States waters, but the dicta in the *Lauritzen* case is broad enough to cover the instant case. It should also be noted that according to the decision of this court in *Bradford Electric Light Co.* v. *Clapper*, 286 U. S. 145, 160, the Workmen's Compensation law of a state is substantive in nature and must be recognized in an adjoining state, where both the employer and the employee are residents of the state whose compensation law is sought to be applied. Furthermore, even if it be conceded that the law of Argentina and the general admiralty law are the same as regards the right to recover damages for unseaworthiness, they are certainly not the same insofar as the measure of damages is concerned, as no court in Argentina, where the maximum recovery under the Workmen's Compensation Act is only one thousand days wages (6,000 pesos) or about $400.00, would ever grant a recovery as large as $20,000. In this connection it is important to note that at the trial the respondent stated that he intends to go back to Argentina as soon as this case has been concluded (R. 67), and hence the effect will be the same as if he recovered the $20,000 in Argentina.

II.

Conflict With the Decisions of the Second Circuit

It has already been shown that the District Judge retained jurisdiction of this case solely because he felt that he must do so under the "doctrine" of the Fourth Circuit and not

because the facts of this particular case warranted the retention of jurisdiction. This being the case, it is clear that the doctrine of the Fourth Circuit, as reflected in the decision of the court below, conflicts with the doctrine of the Second Circuit. The doctrine of the Second Circuit is set out in *The Paula,* 91 F. (2d) 1001 (CA 2), a case in which the facts are almost identical to those in the instant case. Here a German seaman employed on a Danish vessel was injured while the vessel was in the harbor of Jacksonville, Florida. The seaman sued in the Eastern District of New York claiming damages both under the General Maritime Law for unseaworthiness and under the Jones Act for negligence. The District Court declined jurisdiction (17 F. Supp. 555) on the grounds that no satisfactory reason had been given why the Court should retain jurisdiction in the face of a protest by the Danish Consul; and the Court of Appeals affirmed the District Court. It is also important to note from the following excerpt, taken from the opinion of the Court of Appeals (p. 1003), that practically the same reasons were urged for the taking of jurisdiction as were urged by respondent in the court below.

> "(4) The appellant argues that the District Court erred in declining jurisdiction because (1) his cause of action arose in an American port; (2) his witnesses are here; (3) he hopes to obtain a larger recovery by suit than the Danish compensation law provides; and (4) he has incurred debts for hospitalization, living expenses, and attorney's fees since coming to New York."

The Paula, supra, also conflicts with the instant case on the application of the Jones Act, for in *The Paula* the Court of Appeals for the Second Circuit flatly rejected the application of this act, even though the injury had occurred in an

American port. It is true that in the opinion of the court below Judge Parker states that it is unnecessary to pass on the question concerning the Jones Act, but it is clear that the effect of this failure to pass on the application of the Jones Act is to leave the decision of the District Court intact on this point; this means, certainly, insofar as the Eastern District of Virginia is concerned, that the Jones Act remains applicable to this type of case. The decision in *The Paula, supra,* has been followed by many other decisions in the Second Circuit.

O'Neill v. *Cunard White Star, Ltd.*, 160 F. (2d) 446 (CA 2)
Catherall v. *Cunard S. S. Co., Ltd.*, 101 F. Supp. 230 (SDNY) (1952)
Jonassen v. *United States*, 103 F. Supp. 862 (EDNY) (1952)
Lunde v. *Skibs A. S. Herstein*, 103 F. Supp. 446 (SDNY) (1952)
Johansson v. *O. F. Ahlmark*, 107 F. Supp. 70 (EDNY).

CONCLUSION

If the decision of the court below is allowed to stand, any seaman's attorney in the Fourth Circuit who wants to get around the recent decision of this court in the *Lauritzen* case, *supra,* can easily do so by simply framing his cause of action in terms of "unseaworthiness" rather than "negligence". See *Manich* v. *Southern S. S. Co.*, 321 U. S. 96, wherein this court held that a seaman's injury was caused by unseaworthiness and not negligence when he was injured by a fall from a staging which gave way when a defective rope broke, although the defective rope was selected by the mate when there was ample good rope aboard.

It is, therefore, clear, from the foregoing reasons, that

this is an important matter and certiorari should be granted in order to bring about uniformity between the circuits involved.

Respectfully submitted,

HUGH S. MEREDITH
Counsel for Petitioners

September 25, 1953

APPENDIX

46 U. S. C. Section 688

"Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common law right or remedy in cases of injury to railway employees shall apply. . . ."

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SUPREME COURT OF THE UNITED STATES

October Term 1953

NO. 379

STEAMSHIP "FLETERO" and COMPANIA ARGENTINA DE NAVEGACION DODERO, S.A.,		:
	Petitioners,	:
vs.		:
HUGO ARIAS,		:
	Respondent.	:

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION

I. OPINIONS BELOW

The memorandum opinion of the District Court dealing with the question of jurisdiction is unreported, but may be found at page 17 of the Record. The memorandum opinion of the Court dealing with the case on its merits is likewise unreported, but may be found at page 18 of the Record. The opinion of the Court of Appeals for the Fourth Circuit is unreported at the time of preparation of this brief, but may be found at page 145 of the Record.

II. JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

III. QUESTION PRESENTED

The sole question presented by this Petition is whether the Court of Appeals for the Fourth Circuit has applied the doctrine of discretionary jurisdiction with regard to the right of courts of this country to hear suits of foreigners that arise in this country.

IV. STATUTE INVOLVED

Contrary to the statement of Petitioners, the Jones Act, 46 U.S.C., Section 688, et seq., is not involved in this Petition as the Court of Appeals for the Fourth Circuit expressly stated (R.154):

> "* * * liability can be sustained under the law of the Argentine upon the ground of unseaworthiness alone without reference to the Jones Act." (Underscoring Supplied)

The Court of Appeals noted that the law with regard to unseaworthiness was the same in the Argentine as in this country.

V. STATEMENT

On October 15, 1951, the Steamship "FLETERO" was tied to a dock in the port of Norfolk, Virginia (R.146). While said vessel was so docked the Respondent, an Argentine seaman in the service of the vessel, suffered a shipboard accident that caused the amputation of his right arm.

Respondent was discharged from the vessel on the same date and taken to the Public Health Service Hospital at Norfolk (R.131). Respondent thereafter employed counsel in Norfolk, Virginia, to file a libel in rem against the vessel and in personam against the owner in the United States District Court for the Eastern District of Virginia at Norfolk, Virginia, to recover damages on behalf of Respondent for the loss of his said arm. Respondent alleged unseaworthiness of the vessel as a basis of recovery.

As Respondent was not paid the balance of wages due him at the time of his discharge from said vessel at Norfolk pursuant to the requirements of 46 U.S.C. Section 596, the libel was later amended to claim unpaid wages and penalties. A prior amendment of the libel had asserted an alternative right to recovery for personal injuries pursuant to the provisions of the Jones Act, 46 U. S. C., Section 688, et seq.

Petitioner excepted to the court's jurisdiction on the ground of sovereign immunity and in addition urged the court not to exercise its discretion to accept jurisdiction

since the Respondent was a foreign seaman. The District Court overruled the plea of sovereign immunity (R.17) and exercised its discretion in favor of hearing the case on its merits. Petitioners do not except to the court's ruling with regard to the plea of sovereign immunity.

On the first visit of the Steamship "FLETERO" to the port of Norfolk following Respondent's injury on October 15, 1951, the witnesses to the accident were subpoenaed to give depositions regarding the circumstances of the accident and thereafter a survey of the winches aboard said vessel which were involved in the accident and photographs of the same were procured in the port of Norfolk, Virginia.

Following a trial on the merits the District Court awarded judgment in favor of Respondent in the sum of Twenty Thousand Dollars ($20,000.00) as indemnification for personal injuries, and the sum of One Thousand Three Hundred Four Dollars and Seventy One Cents ($1,304.71) in payment of wages and penalties that had accrued pursuant to the provisions of 46 U.S.C. Section 596 (R.146).

Petitioners appealed the judgment of the District Court to the Court of Appeals for the Fourth Circuit and the District Court opinion was affirmed by that Court on July 31, 1953 (R.145).

Petitioners do not assign as error the affirmance by the Court of Appeals of that portion of the judgment of the

District Court awarding Respondent wages and penalties as aforesaid.

Respondent is and has been a resident of this country continuously since October 15, 1951.

The Court of Appeals for the Fourth Circuit affirmed the opinion of the District Court that a proximate cause of Respondent's injury was the unseaworthiness of the vessel.

VI. ARGUMENT

The only issue present in this case is whether the Court of Appeals for the Fourth Circuit was correct in affirming the exercise of the District Court's discretion to retain jurisdiction of this personal injury suit.

At page 2 of the Petition filed herein it is stated that three questions are presented. The first distorts the question involved by inferring that the Court of Appeals for the Fourth Circuit in its opinion laid down the principle of law that District Courts in the Fourth Circuit must retain jurisdiction of tort suits by alien seamen. Chief Judge John Parker, who wrote the opinion of the Court, did not so hold. The Court clearly enunciated its opinion that the question of exercising jurisdiction in the instant case was discretionary and that the lower court had properly exercised its discretion. On this point Judge Parker stated (R.146):

"* * * Appellants contend, however, that the District Judge retained jurisdiction because he was erroneously of opinion that, under the decisions in this Circuit, he had no discretion in the matter. Appellants are the ones who are in error as to this. The District Judge in his memorandum of November 26, 1952, in which he passed on the question of liability, distinctly stated that the Court had 'exercised its discretion to assert jurisdiction of the alien's claim here, in accordance with the doctrine of this Circuit'. "

Petitioners state that the second question raised by their petition is what law should be applied to the case of an Argentine seaman who is injured aboard an Argentine vessel in a port of the United States. This question is not material, for as stated in the Appellate Court's opinion there was no difference in the law of the Argentine and the law of the United States with regard to liability for injuries resulting from an unseaworthy condition, the decisive point in the instant case. There being no conflict, it was immaterial which law was applied. The Court stated (R.154):

"* * * And even though liability on account of unseaworthiness be determined by the law of the Argentine, as the law of the flag, instead of by our law, as the law of the place where the

injury occurred, there is no difference between that law and our law as to the liability arising out of unseaworthiness. * * *."

Petitioners attempt to infer that the applicability of the Jones Act, Title 46 U.S.C., Section 688, et seq., constitutes a third question raised by this petition. The affirmance of the District Court opinion by the Circuit Court in the instant case was based upon the unseaworthy condition of the vessel involved and not upon negligence proved under the Jones Act, supra.

Regarding the inapplicability of the Jones Act to the instant case, the Court of Appeals stated (R.154):

"We need not decide the point, however, for the liability of the vessel and her owners was expressly based, and properly based, by the Court below on the unseaworthiness of the vessel resulting from the defective condition of the brakes of the winches, as well as upon the negligence of the winch operator, and the liability can be sustained under the law of the Argentine upon the ground of unseaworthiness alone without reference to the Jones Act. * * *."

In view of the above, it is manifest that there is no important question of Federal law requiring a decision by this Court, nor is there any basic conflict between the doctrine of the Court of Appeals for the Fourth Circuit regarding the exercise of discretionary jurisdiction in alien seaman's cases and that of any other Circuit.

A. The Decision Below Is Clearly Correct.

Despite Petitioner's inferences to the contrary, it is clear that both the District Judge and the Court of Appeals considered the retention of jurisdiction in this case to be discretionary and exercised the discretion in favor of retaining jurisdiction.

This principle was early enunciated by this Court in The Belgenland, 114 U.S. 355, 5 S. Ct. 860, and has been followed by the Fourth Circuit for over a quarter of a century. (R.147)

Before reviewing the facts of this case, respondent wishes to emphasize the principle of law that controls the review of the lower court's exercise of discretion in the instant case.

The Court of Appeals stated the law as follows (R.147):

> " " " And when in such case the District Court exercises its discretion in favor of assuming jurisdiction, this discretion will not be reviewed on appeal, in the absence of a showing that it was exercised on wrong principles, or that the District Judge has acted 'so absolutely differently from the view which the Court of Appeal holds that they are justified in saying he has exercised its wrongly.' "

In adopting this language the Court was following the rule laid down by this Honorable Court in The Halgaaland, supra. Certainly, it cannot be said that jurisdiction was exercised on wrong principles or that a review of this act constitutes a proper subject for certiorari.

In the instant case the Respondent lost his right arm in a shipboard accident at Norfolk, Virginia. He was hospitalized and discharged from the vessel in Norfolk and resided in Norfolk at the time of trial. Vital testimony had been reduced to deposition at Norfolk, Virginia. The vessel had been surveyed and photographs taken of significant equipment at Norfolk, Virginia.

These undisputed facts amply support the lower court's exercise of jurisdiction in this case.

As stated by the appellate court (R.148):

> "There is nothing in law or in sound common sense which requires that, in this posture of affairs, the court throw libellant out of court and tell him to start over again and in a distant jurisdiction, * * *".

Aside from the fact that the interests of justice required a prompt adjudication of this case on the personal injury count alone, the retention of jurisdiction is almost inevitable when, as in this case, the second count involved a breach by Petitioners of Title 46, U.S.C., Section 596. When this section is breached by a foreign shipowner in this

country it is mandatory that our federal courts take jurisdiction of a suit involving the breach. The Court of Appeals recognized the effect of this feature of the instant case in the following language (R.150):

> "* * * The fact that the Court must assume jurisdiction of the claim arising under the statutes of the United States is a circumstance which it may properly consider in deciding whether it will assume jurisdiction of the claim for damages so that the libellant may be awarded complete relief against the vessel in one suit."

This Court held that Title 46 U.S.C., Section 596 applied to foreign seamen in the case of Strathearn S. S. Co. v. Dillon, 252 U.S. 348, 40 S. Ct. 339.

The decision of the Court of Appeals for the Fourth Circuit is imminently sound and does not require review by this Honorable Court.

B. There Is No Conflict With Decisions Of The Supreme Court.

Both the Court of Appeals for the Fourth Circuit and this Honorable Court recognize that the retention of jurisdiction in cases of alien seamen arising in this country is discretionary.

It is patent that there is no conflict between the instant decision and prior decisions of this Honorable Court

regarding this controlling principle in the instant case.

The weakness of Petitioners' request for a review of the instant case is indicated by the degree of their participation in legal gymnastics in a strained attempt to indicate that there is some conflict with the opinion of this court in Lauritzen v. Larsen, 73 S. Ct. 921.

The Lauritzen case, supra, involved the applicability of the Jones Act, supra, to an alien seaman injured in a foreign port. The instant case was decided under the principle of law that makes a vessel liable in rem and the owner liable in personam for injuries caused by the unseaworthiness of the vessel or its equipment. In the instant case the tort occurred while the vessel was tied to a dock in the port of Norfolk, Virginia.

Petitioners are unable to cite any similarity between the Lauritzen case, supra, and the instant case.

As noted by this Honorable Court at page 924 of 73 S.Ct., a suit to recover damages under the Jones Act is in personam against the ship owner and relies on proof of negligence and not one in rem against the ship itself for unseaworthiness, as is true in the instant case.

It is apparent that the ruling of the Fourth Circuit in the instant case that Petitioners are liable to Respondent for damages resulting from unseaworthiness, a remedy available under the law of the Argentine as well as this country, is not in conflict with the Lauritzen case, supra.

C. There Is No Conflict With The Decisions Of The Second Circuit.

Petitioners attempt to manufacture a conflict between the decision of the Fourth Circuit in the instant case and similar decisions in the Second Circuit, by stating that the doctrine of the Fourth Circuit as enunciated in the instant case is to the effect that it is mandatory for the Federal Court to take jurisdiction of a suit by an alien seaman arising in this country.

As previously stated this was not the holding of the lower courts. Petitioners urged this point in the lower court and Chief Judge Parker's disposition of the argument bears restatement. The Court of Appeals stated (R.146):

> "Appellants contend, however, that the District Court retained jurisdiction because he was erroneously of opinion that under the decisions in this Circuit he had no discretion in the matter. Appellants are the ones who are in error as to this. The District Judge in his memorandum of November 26, 1952, in which he passed on the question of liability, distinctly stated that the court had 'exercised its discretion to accept jurisdiction of the alien's claim here, in accordance with the doctrine of this Circuit.' * * *". (First Underscoring Supplied)

The Court then cited cases in support of the Fourth Circuit doctrine that retention of jurisdiction of an alien seaman's case is discretionary.

This is the doctrine of the Second Circuit.

The Second Circuit in The Paula, 91 Fed. (2d) 1002, stated:

> "That a suit in admiralty between aliens may be entertained or dismissed in the exercise of a sound judicial discretion is clear beyond dispute. Canada Malting Co. v. Patterson Steamships, 285 U.S. 413, 52 S. Ct. 413, 76 L. Ed. 837."

Respondent submits that there is no conflict of decision between that of the Fourth Circuit in the instant case and those of any other Circuit or this Honorable Court.

VII. CONCLUSION

For the reasons heretofore set out it is respectfully submitted that the petition for writ of certiorari be denied.

Respectfully Submitted,

Of Counsel for Respondent

Jett, Sykes & Howell,
701 Citizens Bank Building,
Norfolk 10, Virginia,
Counsel for Respondent.

OCTOBER TERM, 1953

NO. 379

STEAMSHIP "FLETERO" and COMPANIA ARGENTINA DE NAVEGACION DODERO, S.A.,		:
	Petitioners,	:
vs.		:
HUGO ARIAS,		:
	Respondent.	:

PETITION FOR LEAVE TO PROCEED IN FORMA PAUPERIS.

Petitioner, Hugo Arias, who is the respondent in the above captioned petition for certiorari which has been filed with this Honorable Court, asks leave to file the attached brief on behalf of said respondent in opposition to said petition for writ of certiorari without prepayment of costs and to proceed in forma pauperis, including the right to file a typewritten brief. Petitioner's affidavit in support of this petition is attached hereto.

R. Arthur Jett (Signed)

Of Counsel for Petitioner.

Jett, Sykes & Howell,
Citizens Bank Building,
Norfolk, Virginia,

Kanter & Kanter,
Citizens Bank Building,
Norfolk, Virginia,
Counsel for Petitioner.

OCTOBER TERM, 1953

NO. 379

STEAMSHIP "FLETERO" and COMPANIA ARGENTINA DE NAVEGACION DODERO, S.A.,	:
Petitioners,	:
vs.	:
HUGO ARIAS,	:
Respondent.	:

AFFIDAVIT IN SUPPORT OF PETITION FOR LEAVE TO PROCEED IN FORMA PAUPERIS.

STATE OF NEW YORK,

CITY OF NEW YORK, to-wit:

This day personally appeared before me, the undersigned Notary Public of and for the City and State aforesaid, Hugo Arias, who after being first duly sworn deposes and says as follows:

That I am the petitioner in the foregoing petition for leave to proceed in forma pauperis and am the respondent in the above captioned petition for writ of certiorari, and in support of my application for leave to proceed without being required to prepay costs or fees and to file a typewritten brief, state as follows:

1. That I am a native of Argentina, but am at the present time and since October 15, 1951, when I lost my right arm in a shipboard accident at Norfolk, Virginia, have been residing in the United States.

2. That since the loss of my said arm on said date I have been unable to find gainful employment and am at the present time in a state of poverty.

3. That because of my said poverty I am unable to pay any costs incident to this proceeding and do not have money to pay for the printing of the brief which I desire to file in opposition to the petition for certiorari which has been filed with this Honorable Court to the judgment of the United States Court of Appeals for the Fourth Circuit affirming a decision of the United States District Court for the Eastern District of Virginia, Norfolk Division, awarding damages for the loss of my said arm in the amount of Twenty Thousand Dollars ($20,000.00) and wages and penalties due me in the amount of One Thousand Three Hundred Four Dollars and Seventy One Cents ($1,304.71), against the Steamship "PLETERO", in rem, and Compania Argentina De Navegacion Dodero, S.A., in personam, petitioners for the aforesaid writ of certiorari.

4. That I believe that I am entitled to the redress against the said petitioners herein as awarded me by the said United States District Court and the said United States Court of Appeals for the Fourth Circuit.

And further this deponent saith not.

Hugo A. Arias (Signed)
Hugo Arias

Subscribed and sworn to before me this 3 day of October, 1953.

Evelio Gonzalez (Signed)
Notary Public

My commission expires:

EVELIO GONZALEZ
Notary Public, State of New York
No. 24-1501700
Qualified in Kings County
Certs filed with Co.Clks Kings NY
Certs filed with Reg Kings NY
Term Expires March 30,1955.